

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 4:09-CR-107-H

UNITED STATES OF AMERICA

V.

BRIAN JAMES LYLE (3) and
RICHARD GENE WHEELER (4),
Defendants.

ORDER

Before the court are motions to withdraw guilty pleas filed by defendants Brian James Lyle and Richard Gene Wheeler, as well as the government's motion to dismiss the indictments against those defendants. Defendants move to withdraw their guilty pleas, each arguing that United States v. Simmons, No. 08-4475, slip op. (4th Cir. Aug. 17, 2011) (en banc), establishes actual innocence of the offense charged (possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1)) because none of his prior convictions are for an offense "punishable by a term of imprisonment exceeding one year" under North Carolina law.

For good cause shown and with the government's consent, the court GRANTS defendants' motions to withdraw their guilty pleas. The court further GRANTS the government's motion and hereby

DISMISSES the indictment as to defendants Brian James Lyle and Richard Gene Wheeler.

This 6th day of September 2011.

A handwritten signature in black ink, appearing to read "Malcolm J. Howard", is written over a horizontal line.

MALCOLM J. HOWARD

Senior United States District Judge

At Greenville, NC
#31